THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on :12.02.2007

WP(C) No.13184/2006

MUKHVINDER SINGH ...Petitioner

- versus -

UNION OF INDIA & ANOTHER ...Respondents

Advocates who appeared in this case:
For the Petitioner : Mr Mr N.K. Handa & Mr Dharmendra Prasad
For the Respondents : Mr Mayank Goel

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in Digest?

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition was initially filed by the petitioner seeking return of his Passport No.A-3448836 which had been impounded by the respondents. Subsequently, an amended writ petition was filed wherein the additional prayer of quashing of the order dated 21.08.2006 passed by the Section Officer, Ministry of External Affairs, New Delhi was sought. The impugned order dated 21.08.2006 has reference to the petitioner's representation dated 20.02.2006 for release of the seized passport. A copy of the representation is already on record as it was annexed alongwith the original writ petition. From the impugned order, it appears that the petitioner's passport facilities had been

refused under Section 6 (2) (i) of the Passports Act, 1967 (hereinafter referred to as 'the said Act'). The reasons given for such refusal read as under:-

> "1. Making a false statement about loss of passport No.A-3448836 issued on 22.7.1997 by PO, Jalandhar before the Embassy of India, Jakarta to obtain a travel document (Emergency Certificate) with malafide intentions;
> 2. Holding two travel documents concurrently (Emergency Certificate No.653726 dated 28.12.1998 and Passport No.A-3448836 dated 22.7.1997.
> 3. Suppression of the fact that traveled to India on 30.12.1998 on Emergency Certificate.
> 4. Your inability to disclose details of travel document used for travel to Germany."

2. The learned counsel for the petitioner, with reference to the impugned order dated 21.08.2006, straightway pointed out that the provisions of Section 6(2) (i) of the said Act were clearly inapplicable inasmuch as this was not a case of refusal of the passport or travel documents. The petitioner already possessed a passport which had been impounded.

3. In response to this, the learned counsel appearing on behalf of the respondents, submitted that a wrong Section has been mentioned and that, in fact, the passport of the petitioner was impounded under the provisions of Section 10 (3) (b) of the said Act. This provision specifically authorises a passport authority to impound or cause to be impounded or revoke the passport or travel document, if such passport or travel document was obtained by suppression of material information or on the basis of wrong information

provided by the holder of the passport or travel document or any other person on his behalf. It is the case of the petitioner that there was no suppression of any material information on the part of the petitioner which resulted in the issuance of the passport or the travel document. The case as put forth by the learned counsel for the petitioner is that on 22.07.1997, the petitioner was issued the aforesaid passport by the Jalandhar Regional Passports Office and the said passport was valid upto 21.07.2007. It is stated that in 1998, the petitioner, after obtaining a valid visa to travel to Indonesia, went to Indonesia. During his stay in Indonesia, he misplaced his passport. A complaint was registered for loss of his passport. Although it is stated by the counsel for the respondents that upon the lodgment of such report, the petitioner was issued an emergency certificate for return to India, the learned counsel for the petitioner refutes this statement. The learned counsel for the petitioner submits that the petitioner travelled without any passport or emergency certificate from Indonesia to Germany in 1999 and that he was given political asylum in Germany. It is further submitted that on 26.08.2005 the petitioner married a German national, namely, Ms Domling Birgit Charlotti and that on 26.09.2005, the petitioner, who had, in the meanwhile, found his passport, was granted a German visa valid upto 01.10.2006 and the same had been affixed on that passport. It is further contended that the petitioner came to India on 09.12.2005 alongwith his German wife. On 25.01.2006, when the petitioner was returning to Germany with his wife, he was restrained and his passport was impounded.

According to the petitioner, he was so restrained on the ground that the passport had been reported lost and a look out circular (LOC) had been issued in this context and it was because of the LOC (which was still active) that the passport of the petitioner was impounded and he was restrained form travelling to Germany. According to the learned counsel for the petitioner, the only fault of the petitioner is that after he had found his passport, he did not inform the authorities in India that the passport had been found as a result of which the look out circular (LOC) was not cancelled and this ultimately resulted in the impounding of his passport.

4. He has also impugned the impounding order dated 21.08.2006 in the amended writ petition inasmuch as the order was passed after he had filed the writ petition. He also submits that a proper opportunity was not granted to the petitioner to place the aforesaid facts before the concerned authorities.

5. The learned counsel for the respondents was also heard and he made various submissions in support of the impugned order. He firstly stated that there is no indication as to how the petitioner was able to travel from Indonesia to Germany without any travel document. He further submitted that the petitioner has not given any details as to when the passport had been lost and when it was found by him. He has also stated that an Emergency Certificate No.653726 dated 28.12.1998 was issued to the petitioner and that he

travelled to India on that document on 30.12.1998 and there is an endorsement to that effect. It is the case of the respondents that the petitioner has suppressed material facts as also the fact that he travelled to India on 30.12.1998 on the said Emergency Certificate when the original passport was already with him.

6. Considering the arguments advanced by the counsel for the parties, I am of the view that since the impugned order had not been passed when the initial writ petition was filed and that the order itself quotes a wrong section, i.e., Section 6 (2) (i) of the said Act, when, in fact, the order was issued under Section 10 (3) (b) of the said Act, the same needs to be set aside. The petitioner shall now file a fresh representation within a week deeming the impounding of the passport to have taken place, as indicated above, under the provisions of Section 10 (3) (b) of the said Act for the reasons indicated in the letter dated 21.08.2006 as well as those indicated above in the submissions made by the learned counsel for the respondents. The appropriate authority on receipt of such representation shall dispose of the same within two weeks thereafter in accordance with law.

This writ petition stands disposed of with these directions.

Dasti.

BADAR DURREZ AHMED
(JUDGE)

February 12, 2007
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